

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JAMES G. MORKOETTER)
)
Plaintiff,)
)
vs.) CAUSE NO. 3:11-CV-485
)
SONOCO PRODUCTS COMPANY,)
)
Defendant.)

OPINION AND ORDER

This matter is before the Court on the Motion to Dismiss Plaintiff's Complaint (DE #7), filed by the defendant, Sonoco Products Company, on January 17, 2012. For the reasons set forth below, the Clerk is **DIRECTED** to file the First Amended Complaint (DE #9-1) as of February 13, 2012. Sonoco's Answer to the First Amended Complaint shall be due by April 23, 2012. The Motion to Dismiss Plaintiff's Complaint (DE #7) is **DENIED AS MOOT**.

BACKGROUND

The plaintiff, James G. Morkoetter ("Morkoetter"), filed a Complaint against the defendant, Sonoco Products Company ("Sonoco"), on November 22, 2011, in the Fulton Circuit Court alleging violations of the Family Medical Leave Act ("FMLA"), 29

U.S.C. § 2601 *et seq.*, and section 510 of the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*

(DE #1.) Sonoco filed a Notice of Removal on December 19, 2011.

(DE #2.) Subsequently, in lieu of an Answer, Sonoco filed the instant Motion to Dismiss, arguing that Morkoetter failed to state a claim upon which relief can be granted and that he "pled himself out of court" by admitting that he was not eligible for FMLA at the time his employment was terminated. (DE #7.) On January 27, 2012, in lieu of a Response, Morkoetter filed a Motion to File First Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a). (DE #9.) Magistrate Judge Christopher A. Nuechterlein granted Morkoetter's Motion to Amend on February 13, 2012, noting that Sonoco failed to respond within the required fourteen days.

(DE #10.) See N.D.L.R. 7.1(a). Later that same day, however, Sonoco did file a Response in Opposition to Plaintiff's Motion to File First Amended Complaint, reiterating their position that Morkoetter's First Amended Complaint failed to meet the requisite pleading standards and arguing that the amendment was futile. (DE #11.) Finally, on February 20, 2012, Morkoetter filed a Reply to Defendant's Response in Opposition to Plaintiff's Motion to File First Amended Complaint, requesting that the Court "allow him to file his First Amended Complaint, to overrule and deny Defendant's Motion to Dismiss, and for all other just and proper relief in the premises." (DE #12, p. 7.)

DISCUSSION

Although the last two filings present arguments as to whether or not Morkoetter should be allowed to file his First Amended Complaint, the Court notes that the Motion to File First Amended Complaint was granted by Magistrate Judge Christopher A. Nuechterlein on February 13, 2012. Therefore, Morkoetter's First Amended Complaint (DE #9-1) is now the controlling document in this case. The Clerk is **DIRECTED** to file the First Amended Complaint as of February 13, 2012.

An amended complaint becomes controlling once it is filed because the prior pleading is withdrawn by operation of law. *Johnson v. Dossey*, 515 F.3d 778, 780 (7th Cir. 2008); see also *Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1057 (7th Cir. 1998). Because the First Amended Complaint supersedes the Original Complaint, Sonoco's Motion to Dismiss (DE #7) is **DENIED AS MOOT**.

There is no Motion to Dismiss related to the First Amended Complaint on file. As such, any ruling on the First Amended Complaint would be inappropriate. See *Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 765 (7th Cir. 2006). However, in so ruling, the Court notes that it has not made any determination as to the merits of Sonoco's Motion to Dismiss, and the parties are free to file additional motions based specifically on the First Amended Complaint should they so desire. Additionally, because there has

apparently been some confusion regarding the filings in this case, Sonoco's Answer (and/or motion to dismiss in response) to the First Amended Complaint shall be due by April 23, 2012.

CONCLUSION

Therefore, for the reasons set forth above, the Clerk is **DIRECTED** to file the First Amended Complaint (DE #9-1) as of February 13, 2012. Sonoco's Answer to the First Amended Complaint shall be due by April 23, 2012. The Motion to Dismiss Plaintiff's Complaint (DE #7) is **DENIED AS MOOT**.

DATED: April 6, 2012

/s/RUDY LOZANO, Judge
United States District Court